Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage	)	WC Docket No. 18-155
	)	

COMMENTS OF CENTURYLINK

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CenturyLink, Inc.[1] submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced matter regarding access arbitrage (*Access Arbitrage NPRM* or *NPRM*).[2]

I. INTRODUCTION AND SUMMARY.

The *Access Arbitrage NPRM* seeks comment regarding certain proposals designed to eliminate financial incentives to engage in access stimulation and other types of access arbitrage practices.[3]

CenturyLink echoes the Commission's concerns regarding these practices, which are currently imposing significant harms on the industry and undermining the Commission's intercarrier compensation (ICC) regime. CenturyLink applauds the Commission for seeking a way to take targeted steps to address these problems. And, CenturyLink concurs with the

[1] This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

[2] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 (rel. June 5, 2018) (*Access Arbitrage NPRM* or *NPRM*).

[3] *NPRM*, ¶ 3.

suggestion in the *NPRM* that the first steps should be to address intermediate switched access charges associated with access stimulation traffic flows and the distinct, but related, arbitrage practices by which some terminating carriers refuse requests for direct interconnection in order to force IXCs to utilize less cost-effective indirect interconnection and thereby artificially derive ICC revenue or other benefits for themselves.[4]

To address the access stimulation component of these arbitrage practices, the *NPRM* proposes to adopt a two-pronged framework that would give access-stimulating LECs two choices about how they connect with IXCs – that is, they could either choose to accept direct connections or choose to be financially responsible for intermediate carrier services utilized for calls delivered to their network.[5] Alternatively, the *NPRM* seeks comment on the prospect of addressing access stimulation by simply moving all traffic bound for access-stimulating LECs to bill-and-keep.[6]

As discussed in greater detail below, the *NPRM* proposals, while well-intended, would not be an effective tool to address the targeted problems with access stimulation. This is because the central, two-pronged *NPRM* proposal (allow direct connections or assume financial responsibility) would likely have the effect of shifting the financial harms of access stimulation to excessive, flat-rate transport costs. In other words, the two-prong approach leaves the financial burden on the IXC to deliver these large volumes of traffic to access stimulators as long as the access stimulator allows the IXC to establish a direct connection. Given that, in most cases, the end offices associated with access stimulation are in remote/rural areas, it is very likely

[4] *NPRM*, ¶ 10.

[5] *NPRM*, ¶ 10.

[6] *NPRM*, ¶¶ 24-25.

that the cost to provision or lease dedicated transport to establish the direct connection would also be high (just as the usage-based charges currently paid to the intermediary providers are excessive). What is more, because traffic stimulators can shift traffic easily, an IXC may find it effectively impossible to avoid unreasonable charges by deploying its own facilities, because as soon as it did so, the traffic stimulator might shift its activities to another destination where the IXC does not have a direct connection. Similarly, the bill-and-keep option, while having some surface appeal, would leave third party intermediate tandem service providers stranded without compensation for their services simply because they find themselves in between IXCs and access-stimulating LECs in access stimulation call flows.

Because of these flaws, the Commission should, instead, address the access stimulation issues by adopting the NTCA et al. proposal that is also discussed in the *NPRM*.[7] Under this proposal, access-stimulating LECs would be required to cease charging terminating interstate tandem switching and tandem transport charges of their own and assume financial responsibility for third party intermediate switched access provider services. This proposal presents the best option for addressing the problems being targeted in the access stimulation context. It would avoid the risks described above by ensuring that access-stimulating LECs bear the financial responsibility for the tandem services being utilized to reach them.

[7] *NPRM*, n. 32; *See* Letter from NTCA, AT&T, Verizon, Windstream, NCTA, Frontier, WTA, US Telecom to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 16-363 at 1 (filed Nov. 16, 2017) (NTCA et al. Nov. 16, 2017 *Ex Parte*); *See also* Letter from NTCA, AT&T, Verizon, Windstream, NCTA, Frontier, CenturyLink, WTA, USTelecom to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Apr. 11, 2018) (CenturyLink Apr. 11, 2018 *Ex Parte*).

The Commission should also address the arbitrage issues caused by forced indirect connection by adopting the CenturyLink proposal described in the *NPRM*.[8] This would impose a two-pronged approach similar to the *NPRM* proposals (allow direct connections or assume financial responsibility), but only do so *outside* of the access stimulation context. Outside of the access stimulation context, a two-pronged approach such as this does not carry the risks described above.

This approach (adopting the NTCA et al. framework for terminating access stimulation call flows and the CenturyLink framework for all other terminating access contexts) could also be implemented relatively easily – by simply adopting a defined transition period and imposing only minimal accompanying implementation guidelines.

Finally, as is also discussed in greater detail below, the Commission has ample legal authority to adopt reforms consistent with the discussion above.

II. DISCUSSION.

A. CenturyLink Echoes The Commission's Concerns Regarding Access Stimulation And Other Ongoing Access Arbitrage Schemes.

CenturyLink applauds the Commission for seeking a way to take targeted steps to close gaps that remain, following the *Transformation Order*,[9] associated with access stimulation traffic

[8] *NPRM*, ¶ 23; *See* Letter from Jeffrey S. Lanning, VP – Federal Regulatory Affairs, CenturyLink to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 07-135 and 10-90 (filed Apr. 30, 2018) (CenturyLink Apr. 30, 2018 *Ex Parte*); *see also* Letter from Timothy M. Boucher, Associate General Counsel, CenturyLink to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-98, 01-92; WC Docket Nos. 07-135, 10-90, 18-155 (filed May 21, 2018) (providing additional detail on CenturyLink's proposal) (CenturyLink May 21, 2018 *Ex Parte*).

[9] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT

and the other access arbitrage practices. With the completion on July 1, 2018 of the final stage of the transition to bill-and-keep of many terminating access charges, many types of arbitrage have been eliminated or at least greatly reduced. But, still others continue and certain arbitrage practices have emerged and/or been exacerbated by the *Transformation Order* reforms. The practices at issue inflict significant economic harm upon the industry.[10] IXCs continue to be harmed by excessive transport mileage and high usage-based rates associated with access-stimulating LECs and their intermediary tandem providers.[11] And, as the *NPRM* correctly suggests, practices by which some carriers refuse requests for direct interconnection in order to force IXCs to pay indirect tandem charges and thereby obtain revenues or other benefits derived from charges imposed on interconnecting carriers also require immediate attention.[12]

B. The *NPRM* Proposals For The Access Stimulation Context Are Flawed.

To address access stimulation, the *NPRM* proposes to adopt a framework that would give access-stimulating LECs two choices about how they connect to IXCs.[13] Under this proposal, access-stimulating LECs choose to accept direct connections either from the IXC or an intermediate access provider of the IXC's choice.[14] Or, they could choose to be financially responsible for intermediate carrier services utilized for calls delivered to their network.[15]

Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (subsequent history omitted) (*Transformation Order*).

[10] *NPRM*, ¶ 3.

[11] *NPRM*, ¶ 6.

[12] *NPRM*, ¶ 13.

[13] *NPRM*, ¶ 3.

[14] *NPRM*, ¶ 9.

[15] *NPRM*, ¶ 10.

Alternatively, the *NPRM* seeks comment on the prospect of addressing access stimulation by simply moving all traffic bound for access-stimulating LECs to bill-and-keep.[16]

There are fundamental flaws in both this *NPRM* proposal and the bill-and-keep alternative.

Most prominently, the two-pronged *NPRM* proposal (choose financial responsibility or direct connection) places unwarranted costs on IXCs and may permit some access-stimulating LECs to continue to engage in pernicious access stimulation – since access-stimulating LECs can be expected to abuse the "accept direct connection" option.

In the normal course, outside of the access stimulation context, a default obligation for the LEC to offer direct connection or pay for intermediate services associated with indirect interconnection will be an appropriate framework. This is because, in the normal course, it will ensure that the decision of when to use direct interconnection and when to use indirect interconnection is in the hands of the financially responsible party (i.e. the IXC in access call flows). And, in the normal course, the IXC will typically utilize direct interconnection only when normal course traffic volumes are high enough to warrant the investment entailed in direct connection. Otherwise, the IXC will typically choose indirect interconnection. In this context, a two-pronged approach (choose financial responsibility or direct connection) can be expected to have a positive effect – since, among other things, it can eliminate current arbitrage practices like those detailed above and below where carriers refuse requests for direct interconnection in order to force indirect interconnection and obtain revenue sharing even when it would be more efficient for the carriers to interconnect directly.

[16] *NPRM*, ¶ 24.

But, in situations involving access stimulation, these normal course economic incentives are distorted by the fact that traffic volumes are being artificially inflated by the access-stimulating LEC. Accordingly, the economic choice faced by the IXC would be a consequence of the LEC's traffic stimulation activities, not natural traffic volumes. In such a circumstance, a rule that requires the IXC to bear the burden to get traffic to the traffic-stimulating LEC, even if it can choose how, merely gives the IXC a choice of which wasteful way it wishes to spend resources. Therefore, CenturyLink supports the NTCA proposal that properly recognizes that the responsibility to pay for the traffic delivery should be assigned to the entity that stimulated the traffic in the first place. Moreover, because traffic stimulation involves stimulated traffic rather than natural call volumes, traffic stimulators may be able to prevent IXCs from avoiding unreasonable charges by connecting directly to traffic-stimulating LECs. As soon as an IXC attempted to do so, a traffic stimulating LEC could simply shift the traffic to another destination where the IXC does not have a direct connection.

The Commission should deter this sort of cat-and-mouse game by adopting the NTCA proposal, shifting financial responsibility to the access-stimulating LEC that is responsible for the artificially stimulated traffic whether direct or indirect interconnection for that traffic is deployed.[17]

[17] NTCA et al. Nov. 16, 2017 *Ex Parte*, p. 1 (urging the Commission to "adopt rules to require carriers that are engaged in access stimulation to bear financial responsibility for all terminating switched transport costs (including both flat-rated and usage-sensitive charges) between their end office (or remote or functional equivalent) and the tandem switch to which the terminating carrier requires inbound calls to be routed. Under these rules, those carriers engaged in access stimulation would not render bills to interexchange carriers for terminating tandem switched transport with respect to stimulated traffic, and would be required to pay the terminating tandem switched transport charges in lieu of interexchange carriers for these calls to other access providers of such transport.")

The *NPRM*'s bill-and-keep alternative would also not accomplish the intended goals.[18] It has some surface appeal, as it would at least eliminate the problem to the extent that access-stimulating LECs may have intermediate carrier services themselves. But, this proposal is overbroad as it would also appear to mandate bill-and-keep for third party intermediate tandem service providers – in other words, precluding those intermediate providers from recovering for their services. Tandem switching and transport services constitute the middle or intermediate component of legacy TDM network connectivity. But, unlike more downstream end office functionality, this functionality does not solely serve a carrier's own end users. And, not all carriers have invested in constructing these intermediate facilities. These services are costly to build and maintain – particularly when they consist of legacy TDM switches and other technology that are gradually becoming obsolete. Over time, the technology and architecture which enables these legacy TDM network services will evolve with the IP migration. But, intermediate network services will continue to be essential – even in the all-IP world. Therefore, continued robust investment in these facilities will be needed and this will only occur if carriers are assured of their ability to obtain fair compensation for their services. The bill-and-keep proposal would leave intermediate network providers stranded without compensation for their services simply because they find themselves in between IXCs and access-stimulating LECs in access stimulation call flows.

C. The Commission Should Adopt The NTCA Proposal To Address Access Stimulation.

Because of the flaws described above, the Commission should, instead, address access stimulation by adopting the NTCA et al. proposal that is also discussed in the *NPRM*.[19] Under

[18] *NPRM*, ¶ 24.

[19] *NPRM*, n. 32; NTCA et al. Nov. 16, 2017 *Ex Parte*.

this proposal, access-stimulating LECs would be required to revise their tariffs to remove any terminating interstate tandem switching and tandem transport charges of their own.[20] And, they would be required to assume financial responsibility for third party intermediate switched access provider interstate tandem switching and transport charges for traffic bound for them.[21] This proposal presents the best option for addressing the problems being targeted in the access stimulation context. It would ensure that access-stimulating LECs will bear the financial responsibility for the tandem services being utilized to reach them. At the same time, it will avoid the risk that access-stimulating LECs will abuse the "accept direct connection" option and simply shift what are currently excessive usage-based tandem charges to excessive direct connection charges incurred by the IXCs to deliver access stimulated traffic.

D. To Address The Problem Of Forced Indirect Interconnection Outside Of The Access Stimulation Context, The Commission Should Adopt The CenturyLink Proposal.

Having addressed access stimulation via the NTCA et al. proposal, the Commission should also address the problem of forced indirect interconnection – an access arbitrage practice occurring outside of the access stimulation context -- by adopting the CenturyLink proposal described in the *NPRM*.[22] The CenturyLink proposal would impose a two-pronged approach similar to the *NPRM* access stimulation proposal described above. Under the CenturyLink proposal, any terminating carrier (i.e. any owner of an end office or its equivalent) would have the fundamental, default obligation to accept direct connections from entities that wish to

[20] *Id.*

[21] *Id.*

[22] *NPRM*, ¶ 33.

terminate access traffic to it.[23] But, the terminating carrier would also have the ability to avoid this default obligation in a given arrangement by choosing to be financially responsible for intermediate carrier services utilized for certain traffic delivered to their network.[24]

Outside of the access stimulation context, a two-pronged approach such as this does not carry the risks described above. This is because, absent access stimulation and the associated higher volumes of traffic driven by such practices, the market can be expected to work efficiently within such a framework. Outside of the access stimulation context, if the parties (IXCs) financially responsible for access ICC are assured the choice between direct connection and indirect connection, they can be expected to act in an efficient manner when making that choice. And, without the distortion caused by access stimulated traffic, terminating LECs and other end office equivalent owners can be expected to efficiently determine the economics involved when deciding whether and when to exercise the option of avoiding direct connection by assuming financial responsibility for intermediate carrier services.

E. If The Commission Adopted CenturyLink's Suggested Approach, It Could Implement It Reasonably Soon And With Only A Few, Essential Implementation Guidelines.

This approach (adopting the NTCA et al. framework for access stimulation call flows and the CenturyLink framework for all other contexts) could also be implemented relatively easily – with only a short transition period and minimal other accompanying implementation guidelines required.

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[23] *See* CenturyLink April 30, 2018 *Ex Parte*. *See also* CenturyLink May 21, 2018 *Ex Parte*, p. 3 (explaining that "[a]ny carrier providing retail voice services (including LECs, CMRS providers, and carriers working with interconnected VoIP providers) shall offer other carriers an opportunity to interconnect directly or indirectly with no additional charges for all terminating switched access traffic.")

[24] *See* CenturyLink May 21, 2018 *Ex Parte*.

To begin with, to implement the NTCA et al. proposal, the Commission need only mandate that, within a designated time period, access-stimulating LECs would be required to complete any activity necessary to put themselves in a position to assume financial responsibility for all intermediate switched access provider interstate tandem switching and transport charges for traffic bound for them.[25] In other words, they must complete any activity necessary to ensure that, for relevant traffic, the exchange of traffic becomes bill-and-keep to IXCs at the tandem. This does not mean that the intermediate switched services tandem provider has to perform the tandem functions for free, it means the terminating carrier has worked with the intermediate switched services tandem provider to assume all financial responsibility and therefore shifts the financial responsibility to them. To accomplish this financial responsibility shift for third party services, these access-stimulating LECs should be specifically required to have completed a commercial contract with any such intermediate switched services tandem provider by the designated date that puts in place all that is necessary to ensure that IXCs in fact cease to be charged for the relevant intermediate carrier services and that, at the same time, intermediate providers continue to be compensated for their services for the relevant traffic. To facilitate the completion of those agreements, the Commission should make clear that it is the responsibility of the access-stimulating LEC to ensure that any tariff changes, billing changes, process changes, facility changes, etc. necessary to accomplish this are put in place by the designated deadline. The Commission should also specify that the default rate for such services is the tandem

[25] The CenturyLink Apr. 11, 2018 *Ex Parte,* p. 3 suggests a 45-day deadline for this transition. A slightly longer time period may also be reasonable for this component since the purpose of this time is to enable access-stimulating LECs to complete new contractual arrangements with third parties.

provider's current tariffed rate but that the parties are free to agree to alternative compensation terms.

Implementation for the CenturyLink two-pronged proposal could be equally straight-forward. To implement the first prong of the proposal (shifting financial responsibility), the Commission need only mandate similar steps to those described above for the shifting of financial responsibility in the access stimulation context. In other words, within a designated time period, terminating carriers of all types would similarly be required to complete any activity necessary to permit them to be in a position, where they might exercise that option, to assume financial responsibility for any relevant intermediate switched access provider charges for traffic bound for them. As in the implementation of the NTCA et al. access stimulation proposal, terminating carriers in this context must complete any activity necessary to ensure that, for relevant traffic, the exchange of traffic becomes bill-and-keep to IXCs at the tandem. And, as in that context, this does not mean that the intermediate switched services tandem provider has to perform the tandem functions for free, it means the terminating carrier has worked with the intermediate switched services tandem provider to assume all financial responsibility and therefore shifts the financial responsibility to them. The specific implementation requirements to attend to this could/should largely track with the implementation of the NTCA et al. proposal for access stimulation contexts. In other words, to facilitate the completion of those agreements, the Commission should similarly make clear that it is the responsibility of the terminating carrier to ensure that any tariff changes, billing changes, process changes, facility changes, etc. necessary to accomplish this are put in place by the designated deadline. Default rates would not be needed in this context because the market can be expected to adequately discipline tandem service rates. But, one additional implementation step would be needed to accompany adoption of the

CenturyLink proposal that is not needed for the NTCA et al. proposal and the access stimulation context -- establishing a designated timeline within which a terminating carrier must notify an IXC, in responding to a given direct connection request, that the terminating carrier is exercising the financial responsibility option and therefore stating who the IXC should connect to for the terminating carrier's intermediate switched access provider. This is necessary simply because, in this context as opposed to the access stimulation context addressed by the NTCA et al. proposal, assuming financial responsibility is optional, not mandatory. During this process, it will be important that the IXC understand the necessary requirements from the tandem provider to establish the trunking/interconnections in a manner that allows the tandem provider to operationalize and implement the billing for its tandem services. The tandem provider will need to be able to distinguish the billing for the traffic that continues to be billed to the IXC, as opposed to the charges assumed by and billed to the terminating carrier who has rejected the IXC's request for direct connection. Therefore, it is important that the FCC establish a timeline within which a terminating carrier must respond to an IXC request for direct connection to ensure the necessary tandem arrangements can be established so neither the IXC nor tandem provider are harmed. Moreover, since the terminating carrier will have received the preliminary preparation time described above, the ideal timeline would be the 5-day response time typically given on an access service request (ASR) as this will also facilitate the typical timeline for a turn-up of service (45 days). Within the 5-day response time, the terminating carrier would simply need to indicate whether it intended, in a given case, to accept the direct connection request or exercise its option to designate a tandem location for interconnection and thereby assume financial responsibility.

F. The Commission Has Legal Authority To Adopt This Approach.

The Commission plainly has legal authority to adopt the approach described above.

To begin with, the Commission can modify its current access stimulation rules in the manner proposed by NTCA et al. utilizing the same legal authority it used to establish those rules in the *Transformation Order*. In the *Transformation Order*, the Commission found that its access stimulation rules were necessary "to address the adverse effects of access stimulation and to help ensure that interstate switched access rates remain just and reasonable, as required by section 201(b) of the Act."[26] And, the Commission focused in particular upon the fact that "the interstate switched access rates being charged by access stimulating LECs do not reflect the volume of traffic associated with access stimulation" and, as a result, "access stimulating LECs realize significant revenue increases and thus inflated profits that almost uniformly make their interstate switched access rates unjust and unreasonable."[27] This same concern carries over to the tandem switching and transport rates imposed on the traffic of access-stimulating LECs.

The Commission's legal authority to adopt the CenturyLink two-pronged direct connect proposal is also well-grounded. CenturyLink has previously detailed the legal authority basis for that proposal.[28] As described there, the Commission can adopt the proposed framework under its general section 201 rulemaking authority to implement its bill-and-keep ICC framework adopted pursuant to sections 251, 201 and 332.[29]

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[26] *Transformation Order*, ¶ 662.

[27] *Id.*

[28] *See* CenturyLink Apr. 30, 2018 *Ex Parte*.

[29] This same legal authority rationale can be used as an alternative rationale to support the adoption of the NTCA et al. proposal – by which access-stimulating LECs must assume responsibility for intermediate carrier services for their traffic.

Supporting this conclusion, as CenturyLink has previously explained, the Commission, in the *Transformation Order*, established a bill-and-keep ICC regime for most terminating access charges. And, critical to its decision to establish a bill-and-keep regime for these functions was its finding that carrier costs for these terminating access functions should be recovered through end-user charges, which are potentially subject to competition, rather than "through intercarrier charges, which may not be subject to competitive discipline."[30] The Commission concluded that it had legal authority to accomplish these results "pursuant to [its] rulemaking authority to implement sections 251(b)(5) and 252(d)(2), in addition to authority under other provisions of the Act, including sections 201 and 332."[31] Specifically, it relied on the fact that section 251(b)(5) states that LECs have a "'duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.'"[32] It also relied on the fact that "Section 201(b) grants the Commission authority to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'"[33] The Commission concluded that it had authority "to define the types of traffic that will be subject to section 251(b)(5)'s reciprocal compensation framework and to adopt a default compensation mechanism that will apply to such traffic in the absence of an agreement between the carriers involved."[34] It further found that it had authority under section 332 to establish a default bill-and-keep

[30] *Transformation Order*, ¶ 742.

[31] *Id*., ¶ 738 (internal reference, therein, omitted); *see also id*. at ¶¶ 760-781.

[32] *Id*., ¶ 760 (citation omitted).

[33] *Id.* (citation omitted).

[34] *Id*., ¶ 760.

methodology to apply in the absence of an interconnection agreement with respect to wireless traffic exchanged with a LEC.[35]

In light of the above, the Commission could conclude that adoption of CenturyLink's proposed direct interconnection framework takes further, modest steps to implement the Commission's bill-and-keep framework and advances the same policy goals as those reforms adopted in the *Transformation Order*, and that the Commission therefore has authority under these same provisions.

Notably, this proposal is not inconsistent with the Commission's findings in the *Transformation Order* about the continuing role of states in the bill-and-keep regime. As the Commission explained:

> Under a bill-and-keep framework, the determination of points on a network at which a carrier must deliver terminating traffic to avail itself of bill-and-keep (sometimes known as the "edge") serves this function, and will be addressed by states through the arbitration process where parties cannot agree on a negotiated outcome.[] Depending upon how the "edge" is defined in particular circumstances, in conjunction with how the carriers physically interconnect their networks, payments still could change hands as reciprocal compensation even under a bill-and-keep regime where, for instance, an IXC pays a terminating LEC to transport traffic from the IXC to the edge of the LEC's network.[] Consistent with their existing role under sections 251 and 252, which we do not expand or contract, states will continue to have the responsibility to address these issues in state arbitration proceedings, which we believe is sufficient to satisfy any statutory role that the states have under section 252(d) to "determin[e] the concrete result in particular circumstances" of the bill-and-keep framework we adopt today.[][36]

The Commission also noted, in seeking comment about how the network edge should be defined for bill-and-keep terminating traffic, that states "should establish the network edge pursuant to

[35] *Id.*, ¶ 779.

[36] *Id.*, ¶ 776 (citations omitted).

Commission guidance."[37] If the Commission establishes the proposed interconnection framework, states will still retain considerable authority to "determin[e] the concrete result in particular circumstances."[38]

The Commission also has authority to adopt this direct interconnection proposal pursuant to section 251(a) and the Commission's general rulemaking authority under section 201(b). Section 251(a) provides that "[e]ach telecommunications carrier has the duty… to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." The proposed framework would implement that statutory provision in a manner that, as discussed above, serves important policy goals of encouraging efficiency and competition while removing incentives for regulatory arbitrage, and therefore advances the public interest. Accordingly, the Commission could conclude that, although section 251(a) permits a carrier to satisfy its duty to interconnect by choosing to do so directly or indirectly, the proposed rule, which specifies the financial obligations that flow from the carrier's choice, is necessary to advance these important federal policies.

In making this determination, the Commission could conclude that the statutory language does not, as applied in this context, give terminating carriers the option of insisting that requesting carriers bear the costs of indirect interconnection. The Commission established in the *Local Competition Order*[39] that an incumbent LEC at the time of the 1996 Act could not *force* a competitive provider into direct interconnection. The Commission was clear that the driving

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[37] *Id.*, ¶ 1321.

[38] *Id.*, ¶ 776 (citation omitted).

[39] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996) (subsequent history omitted).

concern was that competitive carriers be permitted to establish interconnection arrangements, particularly those with ILECs, "based upon their most efficient technical and economic choices."[40] Similarly, it follows that the Commission can and should find that a terminating carrier today cannot force a carrier requesting direct interconnection to bear the costs of indirect interconnection that it finds to be less efficient (as demonstrated by the request for direct interconnection). In other words, just as CMRS providers in the late 1990's contended that they should be free to choose the most efficient manner of interconnection with ILECs, so too IXCs should be free to do so as well, or at least to avoid the additional costs of indirect interconnection when that is the only method a terminating carrier will permit.

Finally, it is noteworthy that this proposal is not inconsistent with section 251(f), which exempts certain rural ILECs from specified interconnection obligations set forth in section 251(c).[41] Because this proposal does not impose obligations pursuant to section 251(c), but instead pursuant to section 251(a), section 251(f) does not apply.

[40] *Id.*, 997.

[41] 47 U.S.C. § 251(f).

III. CONCLUSION.

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

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